

BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL  
DEVELOPMENT PERMIT ISSUED BY  
THE CITY OF EVERETT TO THE  
PORT OF EVERETT,

ROBERT E. HAGGARD,

Appellant,

vs.

CITY OF EVERETT and PORT OF  
EVERETT,

Respondents.

SHB No. 74

FINAL FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

A hearing on the request for review of appellant (Haggard) of the granting of a shoreline management substantial development permit by respondent, City of Everett, to respondent, Port of Everett, came on before Board member W. A. Gissberg (presiding) in Olympia, Washington commencing on August 14, 1973.

Marvin B. Durning appeared as attorney for appellant, but withdrew on December 29, 1973; Walter Sellers appeared for the City of Everett

1 (hereinafter City); Lewis A. Bell for the Port of Everett (hereinafter  
2 Port).

3 After the hearing had been concluded on August 22, 1973 and each  
4 party had rested its case, appellant Haggard filed his Motion herein  
5 asking leave to admit certain additional evidence. On February 27,  
6 1974 the Board partially granted that Motion by admitting Appellant's  
7 Exhibit N-1a.

8 Having considered the exceptions, transcript, exhibits, arguments  
9 and briefs, and being fully advised, the Board makes and enters these

10 FINDINGS OF FACT

11 I.

12 Any Conclusions of Law hereinafter recited which should be deemed  
13 a Finding of Fact is hereby adopted as such.

14 II.

15 On April 27, 1973 the City issued to the Port a substantial  
16 development permit to place fill material on Preston Point, sometimes  
17 called Blackman's Point, (hereinafter site) which is at or near the  
18 mouth of the Snohomish River where the tide ebbs and flows. The site  
19 is zoned for manufacturing uses and is in an urban area of existing  
20 heavy industrial plants. It is owned, in part, by the Port and is  
21 situated within its boundaries.

22 Haggard's request for review was timely filed and certified by the  
23 Department of Ecology and there is no contention to the contrary.

24 III.

25 The proposed fill would be on approximately seven acres of land,  
26 of which four acres are uplands and three acres are tidelands, to

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1 accommodate a maximum of 60,000 cubic yards of fill (TR 3-199) to a  
2 maximum height of 18 feet with the water or outer portion of the fill  
3 sloping off naturally into the tidelands. Presently, that area of  
4 the site over which the tide ebbs and flows is used for log storage  
5 (TR 3-68). When the tide recedes, the area then exposed is  
6 found to be composed of mud and decaying wood fiber (TR 3-70;  
7 Respondent's Exhibit 2, Enclosure 2).

8 The existing shoreline of the site is eroding and that process  
9 exposes wood chips and wood waste in the four acre upland area which  
10 is now unimproved and covered by wild grass, willow trees and scrub  
11 alders.

#### 12 IV.

13 The fill to be deposited on the site is composed of clean sands  
14 which have been approved by the Federal Environmental Protection  
15 Agency for disposal in waters of the United States and which would  
16 cover the "volatile solids" now thereon, thereby improving water quality  
17 in the immediate vicinity. The site, if filled, could not be utilized  
18 for heavy construction thereon without stabilization work of some kind  
19 (TR 4-127).

#### 20 V.

21 The Corps of Army Engineers has been authorized by Congress to  
22 perform periodic maintenance dredging of the navigation channel of  
23 the Snohomish River and has done so since 1912 (TR 3-170) in order to  
24 keep the river channel 8 feet deep and 150 feet wide at low water. The  
25 river is used by and for a variety of commerce and navigational purposes.  
26 Because the last dredging of the river at or immediately above its

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1 mouth, took place in 1969, siltation is shoaling to the extent that  
2 commerce and navigation is now restricted in its use of the river.  
3 The Port, by its agreement with the Corps of Army Engineers, is  
4 responsible for making sites available to the latter for the necessary  
5 deposit of river dredgings. Preston Point is but one of several  
6 disposal sites and was selected by reason of economics and the  
7 immediate unavailability of other sites.

## 8 VI.

9 Jetty Island, owned by the Port, has been created since 1912 by  
10 accretion, filling and spoil deposition taken from Everett Harbor and  
11 the Snohomish River channel until now it is an area of some 160 acres.  
12 There have been numerous studies made of what could be done to develop  
13 Everett Harbor and the Jetty. Certain parts of the recommendations  
14 of such studies have been adopted by the Port as part of its official  
15 comprehensive plan, but the Port has not officially adopted as its  
16 plan any proposals for the development of Jetty Island or Preston Point,  
17 except to officially designate Preston Point as a site for the deposit  
18 of spoils.

19 Some Port employees have promulgated studies and proposed plans  
20 which envision the filling of Jetty Island and the construction of a  
21 Preston Point bridge access to it. Preston Point could be, but does  
22 not necessarily need to be, the east end of such vehicular and rail  
23 bridge access.

24 Confusion does exist in the minds of some members of the public  
25 as to the Port's "plan" for the development of Jetty Island. That  
26 confusion has been caused by statements made by various Port

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1 representatives, ranging from the Tams Report being the "plan" of  
2 the Port, to no "present" plans, to a "hope" that eventually the  
3 Port could develop it, to "someday we will go to Jetty Island".  
4 (Appellant's Exhibit 26)

5 VII.

6 The planning staff, the Planning Commission and the City Council  
7 of Everett all were aware that:

8 "The Port of Everett's Comprehensive Plan (sic) does mention  
9 that a landfill at Preston Point could be a potential  
10 industrial area, and possible link to Jetty Island when the  
need for development occurs." (Respondent's Exhibit 1-A,  
page 2 of Enclosure B; Appellant's Exhibit 26, page 3)

11 The City therefore took express note that such a plan was "controversial"  
12 and while approving the specific permit for Preston Point took pains to  
13 declare that such approval would not constitute "an endorsement for any  
14 future program on that site" (Appellant's Exhibit 26, page 3) and  
15 expressly conditioned the shoreline management permit, in part, as  
16 follows:

17 ". . . 3. That any proposed activity or utilization of the  
18 completed fill, or expansion of the fill area will  
require an environmental assessment and Shoreline  
Development Permit. . . .

19 "4. The sole intent of this Shoreline Development Permit  
20 is to allow for only the deposition of spoils  
21 acquired from the 1973 maintenance dredging of the  
Snohomish River by the Corps of Engineers.

22 "5. The approval of the Shoreline Development Permit  
23 shall not be construed as endorsement nor support  
24 for any long range development of the Everett  
waterfront."

25 VIII.

26 In considering the permit application regular procedures of the  
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1 City were followed. The "emergency" contemplated by the Port and City  
2 had to do with shoaling of the river so as to make it non-navigable for  
3 commerce.

4 IX.

5 At all times material hereto, the City had not adopted any master  
6 program under the Shoreline Management Act. The filling of Jetty  
7 Island would not be inconsistent with the Halprin Plan for land use  
8 adopted by the City; rather, a fill on the south end of Jetty Island  
9 could enhance the Jetty's ultimate use, whatever that may be. The  
10 City does not now have a long-range dredge disposal plan and sound  
11 planning calls for such a plan in order to assess the long-range  
12 environmental factors. (TR 2-19). The proposed fill at Preston Point  
13 does not conflict with existing policies relating to the development  
14 of the City's waterfront area. (Respondent's 1-A, Enclosure B, page 3)

15 X.

16 The dredging of the Snohomish River is for the single purpose of  
17 deepening a navigational channel.

18 XI.

19 The City granted the permit after having: (1) gathered information,  
20 data, and documentation regarding the environmental concerns and questions  
21 of the project; (TR 3-96 et seq.; TR 3-24 et seq.) (2) evaluated,  
22 considered and addressed environmental factors; (3) concluded that the  
23 project had an insignificant effect upon the environment. (TR 3-122)

24 The City did not require the preparation of an environmental  
25 impact statement.

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XII.

The City's environmental assessment did not consider the effect the proposed filling of the site would have upon archaeological value, if any, of the site notwithstanding the fact that evidence of such value was known to the City of Everett as early as April 27, 1971. (Appellant's Exhibit N-1a)

XIII.

The proposed fill would have no effect, because of its location, upon flooding conditions of the Snohomish River. (TR 4-123) The fill would have negligible effects upon marine life, wildlife or natural vegetation. A new beach of clean river sediment would be formed covering over the present beach and bottom now composed of bark resulting from years of log storage. The shoreline would be improved by the fill and it would eliminate an eddy of currents at the site and thus cause some improvement in the pattern of currents. (TR 4-122)

XIV.

The Port has not at any time deceived nor attempted to deceive the City nor the public as to its ultimate intentions or plans or hopes for Preston Point or Jetty Island.

XV.

S. G. Aldcroft is a City Councilman and terminal agent of the Burlington Northern Railroad at Everett. The latter's railroad trackage runs adjacent to the site. Mr. Aldcroft has been active in the community and was a member of the Snohomish County Economic Development Council, as well as co-chairman of its Transportation Committee which recommended rail service from the site to the Jetty

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1 and that the Jetty be developed as a Port industrial facility.

2 At the Council meeting at which the permit was granted,  
3 Mr. Aldcroft participated therein, seconded the Motion for its approval,  
4 voted to grant the permit and questioned the necessity for adopting the  
5 planning staff and Planning Commission imposed condition that:

6 "The approval of the SM permit shall not be construed as  
7 endorsement nor support for any long-range development  
8 of the Everett waterfront."

8 XVI.

9 Ralph A. Beswick, a member of this Board as a designee of the  
10 Land Commissioner, heard only the testimony adduced at the first day  
11 of the hearing on this request for review. From an exhibit introduced  
12 into evidence, it appeared that he, and other governmental officials,  
13 met in the City of Everett at the instance of the Corps of Army  
14 Engineers. (TR 2-11) At that meeting the subject matter of the  
15 Preston Point fill was discussed. The Port had then not yet filed  
16 its application for a shoreline management permit.

17 At the commencement of the second day of the hearing on this  
18 request for review, appellant brought the above facts to the attention  
19 of this Board and objected to Mr. Beswick's "presence" on the Board  
20 as a representative of the Land Commissioner. Accordingly, Mr. Beswick  
21 then and there withdrew and heard no further testimony. He did not  
22 comment on any of the evidence, nor question any witness, nor discuss  
23 the case with any Board member, nor in any way participate in the  
24 hearing (except as described above) or in this decision.

25 No other person was subsequently designated by the Land Commissioner  
26 to participate in this request for review.

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1 From these Findings, the Shorelines Hearings Board comes to these

2 CONCLUSIONS OF LAW

3 I.

4 Any Finding of Fact which should be deemed a Conclusion of Law  
5 is hereby adopted as such.

6 II.

7 The substantial development permit is consistent with the Policy  
8 Section of the Shoreline Management Act, the Guidelines of the  
9 Department of Ecology and the master programs of the City of Everett  
10 insofar as can be ascertained.

11 III.

12 The proposed project is not exempt from the permit requirements  
13 of the Shoreline Management Act.

14 IV.

15 The evidence in this case does not warrant a conclusion by this  
16 Board that the appearance of fairness doctrine was violated by the  
17 participation of Mr. Aldcroft.

18 V.

19 The State Environmental Policy Act (SEPA) mandates all agencies of  
20 the state to "preserve important historic, cultural, and natural aspects  
21 of our national heritage." (RCW 43.21C.020(2)(d))

22 As pointed out in Juanita Bay Valley Com. vs. Kirkland, 9 Wn. App.  
23 59:

24 "SEPA requires an Environmental Impact Statement be prepared  
25 prior to the first governmental authorization of any part of  
26 a project or series of projects which, when considered  
cumulatively, constitute a major action 'significantly  
effecting the quality of the environment.'"

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VI.

Although the Port has in fact no official plan to use the Preston Point fill as the first step toward bridging across the Snohomish River to Jetty Island, the City (as seen from Finding of Fact VII) believes to the contrary. Thus, from the City's view, and notwithstanding the precautions of conditioning the permit to the contrary, the fill is, or could be, a threshold project for which an environmental impact statement should have been required.

It is wiser in a close case, a gray area of factual determination, where construction or action would arguably have a significant effect on the environment, to order an impact statement now to avoid delay and uncertainty of repeated hearings and motions encompassing both trial and appellant jurisdiction of the state courts.

It is clear that the City of Everett did not consider an important element of SEPA in arriving at its negative impact determination. (Finding of Fact XII) Therefore, its action in granting the permit was in violation of the procedural requirements of SEPA. An environmental impact statement should be required.

Therefore, the Shorelines Hearings Board issues this

ORDER

Having failed to comply with the procedural requirements of the State Environmental Policy Act, the substantial development permit be and the same is vacated, without prejudice.

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1 DATED this 26<sup>th</sup> day of April, 1974.

2 SHORELINES HEARINGS BOARD

3 Walt Woodward  
4 WALT WOODWARD, Chairman

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6 W. A. GISSBERG, Member

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